IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No. 4794 of 2005

with

Civil Application St No l9969 of 2005

M/s Jigna Construction Co Mumbai. petitioners

vs

The State of Mah and ors.. respondents

Mr Navin Parikh for Naveen Joshi for petitioners

Ms Cardoz AGP for respondent nos.l and 2 State

Mr Manoj Dalvi i/b Banatwala and co for respondent no. 3

Mr. V.A.Thorat Sr Advocate with Ms Gauri K Jadhav for respondent no.4

Mr. Madhav Jamdar for respondent no. 6

Mr. M D Siodia for Interveners.

CORAM;A.P.SHAH & D.Y.CHANDRACHUD JJ.

Dated 2.9.2005

(Per A.P.Shah J):

. The petitioners have filed this petition under Articles 226 and 227 of the Constitution of India and are seeking to quash and set aside the order dated 9.5.2005 passed by the Charity Commissioner

granting permission to sell the property owned by the respondent no. 3 Trust to respondent no. 4 and for direction to respondent no. 3 Trust to accept revised offer made by the petitioners.

2. The respondent no. 3 is a public charitable trust registered under the Bombay Public Trust Act, l950 and is the owner of land bearing C.S.No.l97 Lower Parel Division Mumbai together with buildings standing thereon. The buildings comprise of 68 tenements which are fully occupied by the tenants/occupants. It appears that the annual rent derived from the said property was only Rs.2,5l,796. p.a. while the outgoing of the property towards property taxes and repair cess were around Rs.2,37,000 and in addition the trustees were required to carry out repairs to the buildings with the result there was always deficit and therefore the trustees were desirous of selling the said property on as is where is basis. The trustees after obtaining the valuation report from an architect decided to accept the offer of the respondent no. 4 of Rs.55 lacs plus two flats of 450 sq fts built up area each and accordingly entered into a Memorandum of Understanding with the respondent

no. 4 on 2.l2.2003. Thereafter as per the provisions of the Bombay Public Trust Act, l950 an application being Application No.l28 of 2004 was made to the Charity Commissioner for sanction under section 36(l)(a)of the Bombay Public Trust Act. After the said application was filed the Charity Commissioner vide order dated l3.8.2004 directed the Trust to invite offers by public notice in the newspapers and consider the highest offer that may be received. Pursuant to the advertisement given by the Trust offers were received and the offer of the present petitioners for Rs.l,ll,ll,lll was the highest offer. The trustees requested the respondent no. 4 to enhance their offer and respondent no. 4 in turn enhanced their offer vide letter dated l6.2.2005 to Rs.l,l6,00,00l, which was placed before the Charity Commissioner Mumbai who was pleased to pass the order on 9.5.205 granting sanction.

3. Mr Parekh, the learned counsel appearing for the petitioners submitted that the petitioners had shown their willingness to enhance their offer to Rs.l,25,ll,lll and a letter to that effect was also addressed to the Trust. However, the trustees had acted improperly in rejecting

the offer of the petitioners and accepting the offer of the respondent no.4. Mr.Parekh submitted that the petitioners are willing to further enhance their offer to Rs.l.40 crore and to show their bonafides have also brought Demand Draft for the said amount. On the other hand, Mr.Dalvi, learned counsel appearing for the respondent nos. 3 and Mr.Thorat, learned Senior Advocate appearing for respondent and 4 submitted that a builder whose bid was not accepted cannot challenge the order of the Charity Commissioner under Articles 226 and 227 of the Constitution as he neither has interest in the Trust nor is a beneficiary. Such a person not being a necessary or property party has no locus to challenge the order of the Charity Commissioner on the ground of being higher bidder. It is submitted that the so called revised offer was not accompanied with the requisite earnest money and not accepted by the trustees. It is submitted that conveyance is already executed and registered and respondent no. 4 had negotiated with the tenants/ occupants and majority of them have accepted the proposal for redevelopment of the property . Mr Thorat appearing for the respondent no. 4 submitted that without prejudice to their rights and

contentions the respondent no. 4 are agreeable to match the offer of Rs.l.25,ll,lll allegedly made by the petitioners and pay the price difference.

6. Mr.Siodia, learned counsel appearing for the Interveners i.e tenants/occupants submitted that the respondent no. 4 has negotiated with the tenants/ occupants and finalized the terms and conditions on which the tenants/ occupants are willing to grant the NOC to the respondent no.4 for redevelopment of the property and also fixed stipulated period of 24 months. He submitted that any interference by the Court at this stage would seriously jeopardies the rights of the tenants/ occupants.

5. The grievance of the petitioners is that although they had offered highest price the trustees rejected their offer and the lower offer of the respondent.no.4 was accepted.The basic question is, what is the locus of the petitioners to canvas the grievance. According to Mr. Parekh, pursuant to the advertisement given by the trustees the petitioners had given their offer and appeared before the Charity

Commissioner and thus the petitioners were party to the proceedings and they have a right to approach this Court being a party aggrieved. This submission is wholly erroneous. The proceeding under section 36 of the Act are not a lis between the parties to adjudicate contesting claims. The mandate of section 36 is that no transfer of the trust property shall be valid unless approved by the Charity Commissioner with previous sanction.The Charity Commissioner as per the scheme has to accord the sanction, having regard to the interest or benefit of the trust. The Charity Commissioner in these proceedings after inquiry has to record satisfaction in this behalf. Section 36 merely authorizes the Charity Commissioner to ascertain as to whether the trustees acted in the best interest of the trust. The petitioners, since neither necessary nor proper party to the proceedings under section 36, cannot claim any entitlement to invoke Articles 226 and 227 of the Constitution of India to canvas their grievance against sanction accorded under sub-section (l) of section 36 of the Act.

6. In Arunodaya Prefab vs M D Kambli, l979 Mh L J l04, S.P.Bharucha J.,as he then was, held that

under the terms of section 36, Bombay Public Trust Act, read with Rule 24, Bombay Public Trust Rules, the Charity Commissioner is concerned only with according or refusing sanction to a particular sale which the trustees propose to make. It is a proceeding which concerns only the trustees to decide whether the sale is in the interests of the trust. He is empowered to make such inquiry as he deems necessary. It is for the trustees to decide to whom they should sell the property,subject to the sanction of the Charity Commissioner to the proposed sale. If the Charity Commissioner needs to ascertain the market price of the property he may issue such direction as he deems necessary and it is obligatory on the trustees to comply with thee directions. It is, however, not open to the Charity Commissioner to consider uninvited offers from third parties except for ascertaining the market price of the property. He cannot sell or require the trustees to sell the property to such third parties. The learned Judge also held that the unsuccessful bidders have no locus standi to file a writ petition against the order of the Charity Commissioner.The learned Judge observed that it muse be remembered that the proceedings

under section 36 are in the context of a public charitable trust. If its interests are affected the restricted class of its beneficiaries would be entitled to move the court. This is not a case where public interest even in wider sense is concerned where public rights of a large almost unrestricted body are similarly affected and one or more of them seeks redress by way of a writ.

7. In Girdhar vs Rev E H Lewellen., l99l Mh L J 9l, another learned single Judge of this court, A.A.Desai J., as he then was, following the view taken by Bharucha J. observed as follows:

> "The petitioner is a builder who is anxious to purchase and .not being a person having interest in the trust or a beneficiary cannot question the correctness or legality of the order. The petitioner to succeed in his commercial deal under the guide of a guardian of the interest of a trust is prosecuting this petition under Article 227 of the Constitution which cannot be entertained.He is in reality prosecuting his personal commercial interest which

cannot be permissible. In Arunodaya Prefab vs M D Kambli, l979 Mh L J l04 it is observed that under section 36 of the Act read with rule 24, the Charity Commissioner is concerned only with the according or refusing sanction to particular sale which the trustees proposed to make. It is a proceeding which concerns only with the trustees. To decide whether the sale is in the interest of the trust, he is empowered to make such inquiries as deemed necessary. It is for the trustees to decide to whom the should sell the property subject tot he sanction of the Charity Commissioner to the proposed sale. It is further held that the petitioners who have sent uninvited offer to the Charity Commissioner have no locus standi to challenge the order of the Charity Commissioner by writ petition on the ground of being higher bidder. The Charity Commissioner is not obliged to associate the petitioner into inquiry or to consider the offer made by the petitioner.Shri Deshpande tried to urge

> that in the instant case, the petitioner made an offer on invitation. Therefore he is entitled to maintain this petition. I am unable to agree. The nature of proceedings under section 36 an the scope is definite. Even if the offer was made by the petitioner on the invitation of the trustee, he does not acquire any right to question the legality or correctness of the order passed by the Charity Commissioner under section 36 of the Act".
>
> (emphasis supplied)

8. The view taken by Bharucha J. was also followed by the Division Bench in Suburban Education Society vs Charity Commissioner, 2004(2) Mh L J 792. The Division Bench held that the scope and authority which is exercised by the Charity Commissioner under section 36(l)(a) of the Public Trust Act is very limited. The Charity Commissioner in the first instance is required to consider whether the trust has genuine need for the purpose of selling its immovable property and secondly whether the said property is being sold in the interest of the

trust and its beneficiaries. The Charity Commissioner is not supposed to substitute his own ideas and views vis a vis the functioning of the trust.

9. We are in respectful agreement with the view expressed by Bharucha J. in Arunodaya vs Prefab. A person can be said to be aggrieved only when he is denied legal right by someone who has legal duty to do something or abstain from doing something. As we have already pointed out above the petitioners have no legal right and the Charity Commissioner has no legal duty towards them. The petitioners therefore have no right to challenge the order of the Charity Commissioner especially when it is not the case of the petitioners that the action of the trustees is malafide or they are guilty of fraud or deception.

l0. We also propose to consider the matter on its merits. From the impugned order it is clear that the Charity Commissioner considered what the probable market value of the property was, based upon the offers received pursuant to the advertisement issued by the trust. He came to

the conclusion that the revised price of Rs.l,l6,00,00l offered by the respondent no. 4 was fair and adequate. He also considered the aspect raised by the trustees of the moral commitment made by them to the respondent no.4. He also took into consideration the fact that the respondent no.4 had agreed to buy the said property on as is where is basis. Having considered all these factors the Charity Commissioner arrived at the conclusion that it would be proper to sanction the sale of the property by the trustees to the respondent no.4 at the enhanced price. The revised price offered by the petitioners was not accompanied by the requisite earnest money. In any event this issue is purely academic as the respondent no.4 has agreed to match the revised offer of the petitioners and pay price difference to the trust. Pursuant to the sanction granted by the Charity Commissioner conveyance is already executed and registered. The respondent no.4 has negotiated with the tenants./ occupants who are staying in a dilapidated structure and as per the negotiations arrived between the parties they are entitled to be rehoused in the new structure to be constructed by the respondent no.4. In the

circumstances, no interference is warranted with the order of the Charity Commissioner. Petition is dismissed.